

United States General Accounting Office

GAO

Report to the Chairman, Committee on
Governmental Affairs, U.S. Senate

June 1989

**STATE
DEPARTMENT**

**Need to Reassess U.S.
Participation in the
International Joint
Commission**





United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-206437

June 29, 1989

The Honorable John Glenn
Chairman, Committee on
Governmental Affairs
United States Senate

Dear Mr. Chairman:

In response to your request, we reviewed U.S. participation in the International Joint Commission (IJC) and the Great Lakes Water Quality Agreement of 1978 between the United States and Canada. Our review focused primarily on the extent to which the Commission's recommendations have been implemented and the factors that should be addressed in considering the IJC's changing role and U.S. participation.

Results in Brief

We found that the U.S. government has not implemented many of the 56 recommendations made in the IJC's three biennial reports (dated 1982, 1984, and 1986) issued under the Great Lakes Water Quality Agreement (GLWQA) of 1978. Our review showed that about one of every three major recommendations has not been implemented. U.S. and Canadian government officials often do not advise the IJC in writing concerning the actions being taken or planned on its recommendations.

The U.S. government has not made a thorough review of U.S. participation in the IJC since 1972, and we believe that such a review would be useful. Our work identified several matters that should be addressed during such a review.

Background

The IJC, a U.S.-Canadian binational organization, was established as part of the Boundary Waters Treaty of 1909. The treaty also established the general U.S.-Canadian commitment to cooperatively protect all shared waters, resolve problems along the two countries' border, and address other issues of mutual concern. The IJC consists of six commissioners: three from the United States and three from Canada. The three U.S. commissioners are appointed by the President with the advice and consent of the U.S. Senate.

The IJC has three offices: the U.S. Section Office in Washington, D.C.; the Canadian Section Office in Ottawa, Canada; and the Great Lakes Regional Office in Windsor, Canada. The IJC has 68 staff positions in

The 1978 agreement changed the scope of the IJC's mission even more. Under this agreement, the two countries committed themselves to the general objectives of (1) the "virtual elimination" of toxic contaminants and (2) the cleanup of conventional pollutants, using an ecosystem approach. This agreement gave the IJC responsibility for evaluating progress made in meeting the general and specific objectives of the agreement. The specific objectives included identifying and monitoring the accumulation of particular toxic materials that were entering the lakes and instituting measures to eliminate them from the ecosystem. The IJC was also charged with biennially reporting on the status of the quality of the water in the lakes. The 1983 supplement set target levels for reducing the discharge of phosphorus into the lakes.

The 1987 protocol focused on two themes: updating the 1978 agreement to reflect technical knowledge gained since it was signed and tightening control over the accountability and management of the pollution control projects by the two countries. To further these ends, the protocol adopted the IJC's remedial action plan concept for improving water quality in polluted areas.

The protocol again increased the IJC's areas of responsibility. In addition to monitoring the progress of the two governments in identifying and reducing such sources of toxic pollution in the Great Lakes as municipal and industrial discharge, the IJC was now required by the protocol to monitor the progress of the two governments in addressing airborne sources of toxic materials and pollution from contaminated groundwater as well.

The 1987 protocol, however, also narrowed the IJC's role. In the past, Canadian and U.S. officials believed that the IJC had become too involved in the management of day-to-day operations of projects at the expense of its independent oversight review function. The 1987 protocol was designed in part to correct this by more clearly limiting the IJC's role to that of an evaluator. For instance, under the protocol, the governments were specifically charged with implementing and managing the remedial action plans, while the IJC was specifically limited to evaluating progress made in attaining each plan's objectives.

IJC's attempts to set research priorities and that IJC officials had complained repeatedly that without government feedback on its recommendations, they lacked the information needed to develop more meaningful reports.

Our report also noted that providing formal written feedback on IJC reports and recommendations could offer a number of benefits, including

- greater accountability between the United States and Canada because each government would document its position on important issues;
- improved IJC accountability to the governments, which might improve the quality and timeliness of reports and help IJC to better manage resources;
- greater accountability to the U.S. agencies for the time their personnel spend on IJC technical board activities; and
- greater incentive for U.S. agency personnel to participate in IJC activities and to see results from their efforts.

In response to our 1982 report, State said that the U.S. preparation of responses was systematic and timely. However, our review showed that the Department of State had not responded in writing, in one form or another, to 20, or about 34 percent, of the 59 recommendations made by the Commission. According to one U.S. official, the Canadians also did not respond in writing to every IJC recommendation. The 1909 treaty and subsequent water quality agreements do not require the governments to respond to IJC recommendations, and Department of State and EPA officials told us they are reluctant to formally respond to all IJC recommendations.

The Department of State and EPA officials believe that such a requirement could hinder the decision-making process in choosing between implementing IJC-recommended projects and implementing Great Lakes projects as part of a nationwide program. They noted that if the U.S. government is required to respond, the United States may be put into the position of formally opposing a particular recommendation favored by Canada, or vice versa. According to the officials, it might be better to resolve the problem through informal bilateral discussions of the issues. However, such discussions could be held before formally responding to the IJC.

The Department of State and EPA officials told us that if formal responses were required, they could best be incorporated into the U.S.

general budget constraints. However, no analysis of the IJC's specific request for additional staffing was performed.

To provide the needed leadership in addressing the increasingly complex issues being evaluated by the IJC, a number of IJC and U.S. officials believe that IJC commissioners need a balance of environmental experience, technical expertise—in such fields as hydrology or engineering—and the political acumen to pragmatically deal with the issues that IJC faces. They believe that because environmental issues have become more complex, the commissioners now need greater expertise to strike a balance between environmental goals and the political and fiscal realities of cleanup programs.

U.S. officials acknowledge that such technical competence has not been a strong attribute of U.S. commissioners. The current three U.S. commissioners do not have any technical or environmental expertise. Only one of the past three U.S. co-chairmen has had environmental experience. However, no requirement exists that sets forth the nature or level of technical expertise or professional background and experience that a commissioner should have. By way of comparison, the commissioners of the International Boundary and Water Commission for the United States and Mexico must be technically qualified engineers, according to the 1944 Water Utilization Treaty.

However, other officials stated that those advocating environmental or related technical experience as a necessary prerequisite for the commissioners overlook the fact that the IJC has broad responsibilities in other areas that do not require the commissioners to have such backgrounds, because they can rely on their technical advisers. They believe the IJC fulfills the same function as a nonbinding mediator between the two governments. In their view, it is more important for the commissioners to have diplomatic and political skills to carry out this function.

The Role of the Public in the IJC

The public's access to, and involvement in, the activities of the IJC has increased somewhat in recent years but is still minor. The IJC co-chairmen have generally opposed increasing public participation or representation because they believe that the level of public participation is sufficient already. They point out that the commissioners individually accept invitations to speak to various interested public groups around the lakes. Also, the public was able to comment on the proposed U.S. amendments to the 1978 GLWQA through an unprecedented series of public meetings around the lakes in 1986. Furthermore, a public adviser was

One IJC expert said that it generally takes 4 years to complete a report on the general health of any one of the Great Lakes, mainly because the lack of a common data base impedes IJC's analysis. Compiling the data and putting it into usable form takes considerable time and effort because IJC receives different kinds of data and/or the data comes in a variety of formats.

Conclusions

There are a number of reasons why the United States has not implemented certain IJC recommendations. However, the U.S. government does not provide the IJC with systematic and timely responses to these recommendations. We believe that such responses could provide a number of benefits.

The scope of the IJC's mission has changed under the terms of successive water quality agreements reached since 1972. The environmental problems IJC addresses have become more complex and technical; however, U.S. agencies have not reviewed U.S. participation in the commission for 17 years.

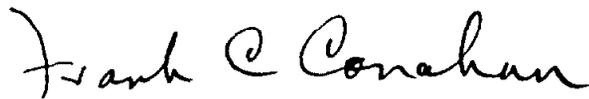
Recommendations

We recommend that, to enhance the IJC's ability to carry out its oversight and evaluative mission, the Secretary of State, in conjunction with officials from the EPA, the Army Corps of Engineers, and other involved technical agencies, establish a formal mechanism to provide prompt U.S. responses to IJC's recommendations. Such responses should include either a confirmation that the U.S. agencies plan to implement a recommendation or an explanation of their rationale for rejecting the IJC's recommended course of action.

Because the role of the IJC has changed under successive water quality agreements since the original 1972 agreement, we recommend that the Secretary of State, with the assistance of officials from EPA, the Army Corps of Engineers, and other involved technical agencies, reevaluate U.S. participation in the IJC. Among the issues that should be included in this assessment are whether (1) the U.S. commissioners should be required to have technical backgrounds or expertise; (2) the size and composition of the IJC staff are appropriate for the current IJC mission; (3) improvements can be made in the methods used for collecting and aggregating data from the states; and (4) greater public involvement would help to achieve the IJC's goals and, if so, what the nature and extent of that involvement should be.

This report was prepared under the direction of Joseph E. Kelley, Director, Security and International Relations Issues. Other major contributors are listed in appendix II.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank C. Conahan".

Frank C. Conahan
Assistant Comptroller General

According to U.S. officials, the United States had not implemented a number of these IJC recommendations for the following reasons:

- budgetary constraints;
- the governments decided that it was better to fund projects within the context of their respective domestic programs, rather than those of the IJC;
- the U.S. government unilaterally, or bilaterally with the Canadian government, decided that certain IJC recommendations should not be carried out;
- IJC recommendations called for actions that went beyond the authority of applicable domestic laws and regulations; and
- financing binational projects outside the framework of the IJC was considered to be a more effective approach.

The primary reason cited was the lack of money. In the view of many IJC and U.S. officials, overall agency budget constraints of the last 8 years have impaired both the EPA and the Army Corps of Engineers in making the larger commitments of resources that carrying out IJC recommendations would entail.

U.S. officials stated that the IJC sometimes recommends programs for the Great Lakes that would be better handled in the context of domestic environmental programs, because the IJC's cleanup programs, such as the remedial action plans, do not take nationwide environmental priorities and budget constraints into account. The IJC sometimes calls for projects that could be implemented only at the expense of environmental concerns elsewhere in the United States, while the EPA and other agencies design programs to take national environmental priorities into account. For example, these officials said that domestic, nationwide environmental programs such as those authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (commonly known as Superfund) are designed to balance the needs of the Great Lakes region with the needs of the rest of the nation.

Some IJC recommendations are not implemented because either the United States or Canada, or both nations together, decide it is not in their interest to do so. According to one U.S. official, one nation or the other may show tacit disapproval simply by not responding to a recommendation. Furthermore, both nations may have to act in concert to implement some of the recommendations. One country may indicate a willingness to carry out a recommendation, but it can proceed only if the other country agrees as well. Still other IJC recommendations may not be

The Department of State and EPA officials are reluctant to formally respond to all IJC recommendations. They believe that such a requirement could hinder the decision-making process in choosing between implementing IJC-recommended projects and implementing Great Lakes projects that are part of a nationwide program. They contend that if the U.S. government is required to respond, the United States may be put into the position of formally opposing a particular recommendation favored by Canada, or vice versa. According to the officials, this may put one country openly in contention with the other, when informal discussion of the issues concerned could resolve the problem quietly.

One individual we interviewed said that requiring the U.S. government to formally respond to IJC recommendations could hinder the decision-making process in another way. He was concerned that agency officials would hesitate to formally and categorically reject even an invalid IJC recommendation because such an action could undermine the credibility and prestige of the IJC.

However, both the Department of State and EPA officials believe that, if necessary, formal responses could best be incorporated into the U.S. government's existing report obligations. The biennial reports of the two governments to the IJC on its progress in developing and implementing the remedial action plans required under the terms of the 1987 protocol were suggested as a possible forum for the U.S. government to respond to the recommendations.

There is no provision in the Boundary Waters Treaty of 1909, which established the IJC, or in any subsequent agreements that requires the governments to respond to IJC recommendations.

3. Can the Commission be provided with more autonomy to implement its recommendations and to plan future programs, and if so how?

According to U.S. officials, the 1987 protocol resulted from the belief of Canadian and American officials that the IJC had become too involved in the management of day-to-day operations of projects at the expense of its impartial review function. This belief stemmed from the fact that the IJC's scope was not clearly limited in the earlier water quality agreements. The 1987 protocol was designed to distinguish between the management role of the government agencies and the review function of the IJC by explicitly making the governments responsible for setting specific water quality objectives and by reinforcing the IJC's evaluative function.

that by raising the consciousness of the public and by engaging it in the cleanup process.

A representative of a public action group concerned with the Great Lakes said that the IJC has enough autonomy; he cited the success of the IJC in developing the remedial action plan concept and getting the local jurisdictions and national governments to adopt the idea. He believes the problem is in getting the IJC commissioners to use their autonomy consistently. In his view, the IJC has the authority and resources to carry out its environmental advocacy responsibility reasonably well, but its commissioners often fail to assert that authority.

What is not disputed is that the IJC is only as effective as the national governments are willing to allow, and its influence is determined by the recommendations the governments are willing to implement. The IJC has no authority to implement or enforce its recommendations; that is strictly the prerogative of the national governments, and that prerogative was reinforced by the 1987 protocol.

4. Has the State Department implemented the 1978 GAO report's accounting suggestions, and have improvements been made in the timeliness and quality of U.S. participation in Commission studies?

In a 1978 report¹ we recommended that the Secretary of State (1) establish a separate fund to help ensure availability of money to promptly begin needed studies that had not been requested at the time the budget was prepared and (2) include direct funding of IJC board activities in the Department of State budget submission to the Congress. We also stated that other agency budgets should no longer include separate funds for Commission studies.

The first recommendation was implemented. In 1980, Congress established a New Reference Start Up Fund. It is currently being funded at \$150,000 a year. In the opinion of IJC officials, this fund has improved the timeliness and quality of the Commission's reference studies.

The second recommendation was made in part to address the problem the IJC had in obtaining sufficient funds to enable representatives of the Great Lakes states to participate in board activities to the extent the state governments and the IJC wished. But this recommendation was

¹How the United States Can and Should Improve Its Funding of International Joint Commission Activities (ID-78-10, Feb. 8, 1978).

6. What is the nature and extent of public access to the Commission and public participation in the selection of the commissioners?

IJC officials and a representative of a public interest group told us that public access to the commissioners as a whole body is limited in the formal sense to the biennial public meetings the full Commission holds when it releases its biennial reports, as required by the 1978 GLWQA. However, the commissioners individually accept invitations to speak to various interested groups around the Great Lakes, as do the Windsor office staff. Also, states, local jurisdictions, and the public were able to comment on the proposed U.S. amendments to the 1978 GLWQA through an unprecedented series of public meetings held around the lakes in 1986. Furthermore, a public adviser was added to the team that negotiated the 1987 protocol, and many of the changes he suggested were adopted. Finally, the Water Quality Board adopted a policy of obtaining public comments on any proposed change in a specific water quality objective.

The Acting Deputy Associate Administrator of the EPA stated that at the April 1988 biannual meeting of the two governments required by the protocol, the United States indicated it would not object to the IJC having public advisers, provided that these advisers serve only as consultants to the full Commission, not its technical boards, and do not participate in policy-making either at the full commission level or at the technical level. The IJC's commissioners were opposed to this idea.

In the view of some IJC and U.S. officials, the public's participation must not extend to policy-making because the Commission is essentially a diplomatic body and operates as such. Its boards' decisions are reached in private, and an IJC official asserted that their effectiveness would be curtailed if the public participated in the decision-making process. Some U.S. officials believed that if the public participated, the members of the technical boards, some of whom are employed by state and national agencies, would not speak frankly but would merely defend the actions of their own agencies.

Some IJC officials offered a different view. They believed that the technical board discussions were already lacking in candor because some members of the boards have inherent conflicts of interest in that they are charged with evaluating the progress of their own agencies' programs. One IJC official told us that public representatives would probably help the proceedings by providing a perspective that is now lacking. This official added that in light of the IJC's evaluative role under the

Major Contributors to This Report

**National Security and
International Affairs
Division, Washington,
D.C.**

Joseph E. Kelley, Director, Security and International Relations
Issues, (202) 275-4128

Joseph F. Murray, Assistant Director

Marie-Denise Sansaricq, Evaluator-in-Charge

B. Patrick Hickey, Evaluator

Requests for copies of GAO reports should be sent to:

U.S. General Accounting Office
Post Office Box 6015
Gaithersburg, Maryland 20877
Telephone 202-275-6241

The first five copies of each report are free. Additional copies are \$2.00 each.

There is a 25% discount on orders for 100 or more copies mailed to a single address.

Orders must be prepaid by cash or by check or money order made out to the Superintendent of Documents.

**Appendix I
Response to Chairman Glenn's
Specific Questions**

terms of the 1987 protocol, obtaining that perspective may take on greater importance.

In the past, proposals have been made to add public representatives to the advisory boards or to establish a Citizen's Advisory Board. These proposals have been turned down. However, the remedial action plans now allow public participation in the types of issues that the IJC addresses. The national and state governments are required to consult with the public in each area of concern when formulating these comprehensive cleanup plans.

A representative of an environmental group believes that to carry out its mission effectively, the IJC should be an active citizens' forum: it should hold frequent and regular public meetings during which concerned citizens of the two countries could present their concerns and help address problems.

The public does not participate in the selection of the commissioners. The Canadian members of the Commission are appointed by the Governor in Council of Canada, and the U.S. members are appointed by the President with the advice and consent of the Senate. They serve at the discretion of the President for no fixed term.

also intended to enable the IJC to fund its own research projects directly. This recommendation has not been implemented because the involved U.S. agencies did not support it. The State Department believed it would undercut effective U.S. technical review and cost-effective management of funds because State was not in a position to independently administer or control all the technical aspects of IJC activities. These activities encompass a number of state and federal environmental and scientific programs and require the services of state and federal agency technical personnel. The State Department is still opposed to the recommendation for the same reasons.

One U.S. official pointed out that giving the IJC funds directly for all of its activities under one line item would reduce the prerogatives of the U.S. technical agencies as to which projects to fund. He believed that the U.S. agencies would lose control and direction if the IJC were to be given a freer hand in determining how to spend U.S.-supplied funds. For instance, the IJC might use funds for research that the U.S. agencies want to keep outside the purview of the IJC. He added that Canada funds its IJC commitments and projects in the same way as the United States.

5. What has been done to address the Commission's staffing problems that were mentioned in the 1978 GAO report?

In our 1978 report, we stated that the IJC was hampered because U.S. staff and financial support had not kept pace with the increasing demands placed on the Commission and the Washington Section Office. That same year, the IJC increased its staff from 9 to 11 in the Washington Section. In 1979, it added five more (four new positions plus one transfer from Windsor). In 1982, one position was cut. No new U.S. staff positions have been added in the past 7 years and the Washington staff has remained at 15. The Great Lakes Regional Office in Windsor has 9 American and 9 Canadian professional staff positions; the 18 administrative support staff positions are all Canadian.

Eight new staff positions were requested in the IJC's fiscal year 1990 initial budget submission (one in Washington, one in Ottawa, and six in Windsor, of which three would be American) to enable the IJC to carry out its responsibilities under the terms of the 1987 protocol. However, the proposed staff increase was dropped by the State Department because of overall budget constraints. According to some U.S. officials, the U.S. government had not performed the necessary analysis to determine whether the proposed staffing increase was justified.

For example, the 1978 agreement had required the responsible regulatory agencies to report to the IJC, in all available detail, their plans for areas designated as candidates to receive specific water quality attention. The IJC could comment on any aspect of the plans, and the regulatory agency was responsible for taking into account the IJC's comments prior to making any formal designation of the areas to receive attention. If no comments were received from the IJC within 60 days, it was assumed that the IJC agreed with the proposed designation, and the regulatory agency could proceed. However, the 1987 protocol revised this provision to say that the IJC "in its evaluative role, shall review" the progress being made in cleaning up the lakes and make recommendations to the two governments.

The IJC and U.S. officials we interviewed generally agreed that the IJC has sufficient autonomy. However, views differ as to whether the IJC is using its autonomy to carry out its mission effectively. These views have depended on what is considered the appropriate role for the IJC. Generally, those who believe the IJC's mission is to be an adviser and facilitator for the two governments told us that the IJC is using its autonomy effectively. Those who assert that the IJC should be an environmental advocate believe it is not effectively using what autonomy it has.

Some believe that the IJC's effectiveness lies in providing the two governments a proven forum in which complicated transboundary disputes can be resolved in such a way that the good working relationship between both nations is preserved. They believe its effectiveness is best judged in terms of the role model it provides for other countries and for other aspects of U.S.-Canadian relations.

According to some IJC officials, most criticism of the IJC in general, and of its commissioners in particular, stems from the belief that the IJC should be an environmental advocate and thus that environmental or related technical experience is a necessary prerequisite for the commissioners. One official pointed out that these critics overlook the fact that the IJC has broad responsibilities in other areas, including monitoring water levels and judging water rights. According to some U.S. officials, the IJC fulfills the same function as a nonbinding mediator between the two governments. They say this function requires that the commissioners have diplomatic and political skills.

Some who want the IJC to take a stronger environmental advocacy role believe that IJC's primary mission, as redefined by the GLWQA, is to act in the best interests of the Great Lakes. In their opinion, the IJC can best do

implemented because they are simply not compatible with domestic U.S. laws and regulations.

In some cases, the United States and Canada have entered into separate bilateral arrangements rather than carry out a project under the IJC auspices. The three most prominent of these bilateral arrangements concern the Niagara River cleanup, the Lake Ontario discharge reduction plan, and the Upper Great Lakes connecting channel study. A former IJC official stated that these agreements stemmed from a desire by the respective environmental agencies of the United States and Canada to develop plans and projects more in line with the agencies' priorities and timetables, rather than those of the IJC.

Government officials countered by saying that they wanted these projects handled in a context separate from the IJC for a number of reasons. For instance, the governments set more specific and attainable interim goals for these projects than do the IJC's remedial action plans, which only restate the GLWQA's ultimate objective of "virtual elimination" of persistent toxic substances. Furthermore, the government officials said that a project under the IJC would generally not have as much detail or proceed as rapidly as separate binational projects. They said that the bilateral plans did a better job of coordinating the local remedial action plans than the IJC could or would have.

2. What are the reasons for any inaction on the part of U.S. agencies in responding to Commission recommendations?

In 1982, we reported that the lack of formal U.S. responses to IJC recommendations had hampered IJC's effectiveness in advising the two governments. When asked to comment on our report in 1983 hearings before the Senate Committee on Foreign Relations, the State Department testified that "the United States has been responsive to the recommendations and reports of the Commission. Preparation of responses is systematic and timely."

However, our review showed that the U.S. government has not acknowledged or responded to many of the recommendations made in the IJC's three biennial reports issued under the 1978 GLWQA. The State Department has formally responded to 39 (66 percent) of the 59 recommendations made by the full Commission. According to a U.S. official, the Canadian government has also not responded in writing to all of IJC's recommendations.

Response to Chairman Glenn's Specific Questions

1. To what extent have the State Department and other U.S. agencies, including the Environmental Protection Agency (EPA) and the Army Corps of Engineers, taken action on the International Joint Commission's (IJC) recommendations?

The U.S. government has not implemented many of the recommendations made in the IJC's three biennial reports (dated 1982, 1984, and 1986) issued under the Great Lakes Water Quality Agreement (GLWQA) of 1978. We found that 29 (52 percent) of the 56 recommendations in these reports have been implemented, 20 (36 percent) have not been implemented, 4 (7 percent) have been partially implemented, and there is disagreement between IJC and U.S. officials on whether 3 others have been implemented. Three additional recommendations are now considered out of date by the IJC.

By implementation, we mean that evidence exists to suggest that programs or plans have been, or are being, executed by the U.S. government, or statutes have been enacted to correct the specific problems identified in the recommendations. The evidence we examined included the State Department's general responses to the three biennial IJC reports, the provisions of the 1987 protocol amending the GLWQA of 1978, and two EPA draft reports on water quality. The two EPA reports are the draft 1988 annual report to Congress under the terms of the 1987 Water Quality Act and the draft of its first biennial progress report to the IJC under the terms of the 1987 protocol. Our findings on the extent to which the IJC recommendations have been implemented were corroborated by IJC and EPA officials.

We categorized each of the Commission's recommendations under one of the five following subject headings:

- Toxic waste disposal. Eight of 12 recommendations were implemented, 1 has been partially implemented, 2 have not been implemented, and 1 is in dispute.
- Research, surveillance, and monitoring of the Great Lakes. Seven of 13 recommendations have been implemented; the remaining 6 have not.
- Greater state and federal coordination. Two of 9 recommendations have been implemented, 6 have not been implemented, and 1 is in dispute.
- Greater U.S.-Canadian cooperation. One of the 2 recommendations in this category has not been implemented, and 1 is disputed.
- Proposed changes to the GLWQA. Thirteen of 20 recommendations concerning the GLWQA were adopted in the 1987 protocol, 3 were partially implemented, and 4 have not been implemented.

Contents

Letter		1
Appendix I Response to Chairman Glenn's Specific Questions		14
Appendix II Major Contributors to This Report	National Security and International Affairs Division, Washington, D.C.	23 23

Abbreviations

EPA	Environmental Protection Agency
GAO	General Accounting Office
GLWQA	Great Lakes Water Quality Agreement
IJC	International Joint Commission

Objective, Scope, and Methodology

Our review of U.S. participation in the IJC was undertaken at the request of the Chairman, Senate Committee on Governmental Affairs. The objectives of our review were to (1) evaluate the extent to which recommendations made by the IJC to the U.S. government under the terms of the 1978 agreement have been implemented and (2) ascertain the factors that may be impeding the effectiveness of U.S. participation in the IJC. As requested, we also developed information to answer the Chairman's six specific questions. The questions and answers are in appendix I.

Our review, which was conducted between September 1988 and March 1989, was performed in accordance with generally accepted government auditing standards. We interviewed and collected information from officials of the Department of State, EPA, and the Army Corps of Engineers Headquarters. We also interviewed and obtained documents from IJC officials at the American Section Office in Washington, D.C.; the Canadian Section Office in Ottawa, Canada; and the Great Lakes Regional Office in Windsor, Canada. Furthermore, we received responses from environmental officials of five of the eight states bordering the Great Lakes, and we talked to representatives from five public and environmental interest groups.

As requested, we did not obtain formal agency comments on our report. However, we discussed the information contained in this report with EPA and State Department officials, and their comments have been incorporated throughout the report.

Unless you publicly release its contents sooner, we plan no further distribution of the report until 30 days from its issue date. At that time, we will send copies of the report to the Department of State, the U.S. Co-Chairman of the IJC, the Environmental Protection Agency, the Army Corps of Engineers, and other interested parties. We will also make copies available to others upon request.

added to the team that negotiated the 1987 protocol, and many of the changes he suggested were adopted. Finally, the Water Quality Board adopted a policy of obtaining public comments on any proposed change in a specific water quality objective.

However, some IJC officials believe that greater public representation on the IJC's Water Quality Board would improve the effectiveness of U.S. participation in the IJC by improving the quality of advice the board provides the commissioners. They cited the fact that members of the board, as it is presently constituted, face an inherent conflict of interest because each of them represents an agency whose programs the Water Quality Board is to evaluate.

According to some of these officials, the quality of advice provided to the commissioners has suffered as a consequence of this inherent conflict of interest. They believe the quality of advice would be improved if the board included members who represented the public's perspective, because they would promote a more objective discussion of what is in the best interest of the Great Lakes. In their view, public representatives would do this by preventing the board members from recommending to the commissioners only those actions compatible with their respective agencies' agendas.

Data Problems

The Great Lakes Water Quality Agreement of 1978, as amended, calls for the governments to seek the cooperation of the states in providing the information needed to measure local and whole lake response to control efforts. The use of common data formats by the federal and state governments would facilitate the coordinated surveillance and monitoring efforts needed to assess compliance with pollution control requirements and would aid the IJC in evaluating the progress being made towards achieving the agreement's objectives.

IJC officials told us that the lack of a common data base had affected the timeliness of their products and their confidence level in the accuracy of their data. Since the eight Great Lakes states³ are not parties to either the treaty or the GLWQA, the IJC is dependent on their willingness to voluntarily supply the data the IJC needs to make its water quality assessments. The IJC officials complained that they had experienced problems in collecting comparable data from the states.

³Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin.

government's existing reporting obligations. The U.S. biennial reports to the IJC, required under the terms of the 1987 protocol, were suggested as a possible forum for the U.S. government to respond to the recommendations.

Changing Role of the IJC and U.S. Participation

A recent report of the House Committee on Foreign Affairs concluded that during this time of budgetary constraints it is important for the executive branch to review U.S. participation in international and bilateral commissions to ensure that continued participation in all such organizations remains important and continues to serve U.S. foreign policy interests.

Although the scope of the IJC's mission has changed substantially since the first water quality agreement was signed in 1972, the involved U.S. agencies have not thoroughly reviewed U.S. participation in the IJC since then. EPA's Acting Deputy Associate Administrator for International Activities expressed the view that a new assessment was warranted in light of the IJC's current mission.

During our review we identified the following issues that may warrant attention in any such assessment: (1) despite changes in the IJC's role, its U.S. staffing level has remained unchanged since 1982; (2) some observers believe that the commissioners should have technical or environmental expertise; (3) although the level of public participation and involvement in IJC activities has increased somewhat in recent years and has had positive results, it is still limited; and (4) IJC officials believe that the lack of comparable data from the states on the Great Lakes' water quality has impeded their evaluations.

Organization and Staffing of the IJC

The IJC and U.S. agency officials we interviewed generally agreed that the IJC is only as effective as the U.S. and Canadian governments are willing to allow. To be effective and efficient, the IJC needs to have proper organization, sufficient resources to carry out its mission, and qualified leadership.

The organization of the IJC and the size of its U.S. staff have not changed since 1982 despite the Commission's changing mission. In 1988, IJC requested a staff increase of eight positions to meet its expanded surveillance responsibilities and carry out its evaluative role, as required by the 1987 protocol. The State Department rejected this request due to

U.S. Implementation of IJC Recommendations

The U.S. government has not fully implemented a number of the recommendations made by the IJC in its biennial reports on water quality, nor has it acknowledged or responded to many of these IJC recommendations. These recommendations covered a range of issues from the very specific and technical, such as changing the criteria used to measure the health risks associated with the transport of toxic chemicals, to very broad issues, such as expanding the definition of what is included in the Great Lakes ecosystem.

We found that 29 (52 percent) of the 56 recommendations in these reports¹ have been implemented, 20 (36 percent) have not been implemented, 4 (7 percent) have been partially implemented, and there is disagreement between IJC and U.S. officials as to whether 3 others have been implemented. According to some U.S. officials, the U.S. government has not implemented IJC recommendations for the following reasons:

- budgetary constraints,
- U.S. agencies decided to fund their own projects rather than those of the IJC,
- the two governments unilaterally or bilaterally decided that certain IJC recommendations should not be carried out or that it is better that projects be done within the context of their respective domestic programs,
- implementation of IJC recommendations would go beyond the authority of applicable U.S. laws and regulations, and
- U.S. agencies decided that financing binational projects outside the framework of the IJC would be more effective.

Lack of U.S. Feedback to IJC on Recommendations

U.S. officials do not routinely notify the IJC in writing what actions, if any, are being taken or are planned in response to IJC recommendations. In a 1982 report, we indicated that without adequate feedback from the U.S. agencies to whom the State Department refers the IJC's recommendations (primarily the Environmental Protection Agency (EPA), but also the Department of Agriculture, the Army Corps of Engineers, and others), the IJC's effectiveness in advising the two governments was being hampered.² We noted that a lack of response had frustrated the

¹In its three biennial reports (dated 1982, 1984, and 1986), the IJC made 59 recommendations, 3 of which are now considered out of date by the IJC.

²International Joint Commission Water Quality Activities Need Greater U.S. Government Support and Involvement (GAO/CEID-82-97, June 23, 1982).

total, not including the six commissioners. The U.S. budget for its participation in the IJC for fiscal year 1988 was about \$3.6 million. The U.S. and Canadian governments share the cost of the IJC equally.

The IJC's mission is to monitor the progress of the two governments in fulfilling their obligations under the 1909 treaty and subsequent agreements. The traditional activities of the Commission include (1) reviewing applications submitted to the IJC for authorization of obstructions, uses, or diversion of boundary water that will affect the natural level or flow on the other side of the international boundary and (2) assessing questions or matters of difference along the common border referred to the IJC for review by the two governments.

In the decades following the signing of the 1909 treaty, the deteriorating quality of the water in the Great Lakes became a problem of increasing importance for the IJC. Mounting concern culminated in the signing of four additional agreements that modified the scope of the 1909 treaty and/or altered the mission of the IJC. They are (1) the Great Lakes Water Quality Agreement of 1972, (2) the Great Lakes Water Quality Agreement of 1978, (3) the 1983 Supplement to the 1978 Agreement, and (4) the 1987 Protocol to the 1978 Agreement.

Under the 1972 agreement, the mission of the IJC was fundamentally altered. The IJC was charged with the responsibility for (1) collecting, analyzing, and disseminating information on the operations and effectiveness of the governments' programs and other measures to improve the water quality of the Great Lakes; (2) tendering advice and recommendations to federal and state or provincial governments for dealing with water quality problems; and (3) assisting in the coordination of joint efforts to control pollution of these boundary waters, including the discharge of phosphorus into the lakes.

The agreement also created two advisory boards, the Great Lakes Water Quality Board and the Great Lakes Science Advisory Board, to provide the IJC expert advice and data on water quality issues. The Water Quality Board is composed of 10 American and 10 Canadian water quality experts employed by either the state, provincial, or national government. It serves as the IJC's principal adviser on matters pertaining to the agreement. The 18-member Science Advisory Board is composed mainly of government or university scientists. It advises the IJC on research and scientific matters. The IJC's Great Lakes Regional Office in Windsor was established under the terms of the 1972 agreement to support the IJC's two Great Lakes advisory boards.

